

Nonprofits Navigating Elections

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Association of Corporate Counsel

National Capital Region

Nonprofit Organizations Network

Sponsor





Jonathan Blum
Shareholder, Polsinelli

Anita Drummond
Assistant General Counsel, American Cancer Society

Julius Hobson
Senior Policy Advisory, Polsinelli

Ann Springer
Deputy General Counsel, American Psychological Association and APA
Services Inc.

Why are Nonprofits Engaged?

Various processes are so interrelated that it is not always easy to distinguish among them:

Government is the exercise of sovereign authority in ruling a society or nation

Politics is the pursuit of governmental power

Lobbying is the process influencing public and governmental policy

Elections is where officials are selected to form and implement policies.

Elements of Engagement

Lobbying involves the advocacy, either by individuals or by groups, of a point of view—the expression of an interest that is affected actually or potentially, by the affairs of government

- Includes litigation, direct lobbying, and public grassroots
- Includes relationship building, forming networks, and leadership development

Issues are public policy proposals

Interest Groups are organizations comprised of individuals or enterprises with shared points of view on issues

Elections where some nonprofits may engage with the public on politics and align with or oppose candidates or ballot measures in order to influence policy and politicians through voters

Lobbying and Government Relations

Government Relations is the application of one or more communications techniques by individuals or institutions to affect the decisions of government

Direct Lobbying means the traditional form of personal persuasion

Marketing, politics, and lobbying share a common characteristic, the need to persuade in order to sell

Grassroots Lobbying is mobilizing organization/association members to prove to legislators that their constituents are concerned about a particular issue

Why engage?

Organizations and individuals lobby public officials or influence candidates for any of several reasons:

1. To gain benefits or relief unavailable in the private sector
2. To gain or retain an economic or other advantage
3. To gain relief or advantage at one level of government that has been denied at another
4. To create beneficial programs
5. To resolve public problems only governments can handle
6. To bring expertise and information to policy making

Tax-Exempt Organizations

Internal Revenue Code variations

- Section 501(c)(3) Private Foundations
- Section 501(c)(3) Public Charities
- Section 501(c)(4) Social Welfare Organizations
- Section 501(c)(6) Professional and Trade Associations

Lobbying and Candidate Electioneering

Lobbying under the Internal Revenue Code

- Influencing Legislation

Candidate Electioneering

- Opposition or support of candidate for public office

Other Laws Regulating Lobbying and Elections

- Federal, state and local lobbying registration and reporting
- State campaign finance laws
- State laws requiring disclosures in lobbying and election communications

Lobbying Limitations under IRC

Private Foundations

- Prohibited from influencing legislation
- Permitted to fund technical assistance and nonpartisan research
- Permissible project specific grant making
- Permitted to fund influencing executive policy

Public Charities

- No substantial part of activities can be influencing legislation

Social Welfare Organizations

- Unlimited lobbying

Associations

- Unlimited lobbying

Discussion

How does an association protect its related public charity when the association is lobbying?

When to form a separate entity to lobby?

What political risks or benefits are present when a candidate strongly opposes or supports your issues and publicly names your organization?

What special legal risks does a charity have to consider when a candidate is involved in your issues and may name your charity?

501(c)(3) Engagement in Elections

Ballot measures

- IRS reportable lobbying expense and conducted under state campaign law

Sponsorship of debates or forums of candidates

- Must be broad range of issues and independent panel or moderator

Candidate questionnaires and resulting voters guides

- Must be a broad range of issues and without comparison

Voter Education and Registration

- GOTV – Nonpartisan
- Beware state voter registration laws

When is a Person a Candidate?

Definition of a candidate for IRS purposes

- Public announcement of candidacy
- Official filing as a candidate
- Formation of fundraising or exploratory committee
- Formation of a coordinated “Draft X for Y Position” effort
- The “walk like a duck” rule

Prohibited 501(c)(3) Candidate Electioneering

Express or indirect advocacy for or against candidates

Use of charity resources for candidates, including in-kind contributions

Coordinating with candidates on events or similar benefits

Implicit endorsements

- Advertisement applauding work of candidate without asking for vote
- Advertisement reminding voters to protect unborn children on Election Day

Candidate Electioneering Factors

The communication identifies a candidate for public office

The timing of the communication coincides with an electoral campaign

The communication targets voters in a particular election

The communication identifies that candidate's position on the public policy issue that is the subject of the communication

The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications

The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue

Discussion

How does a charity engage with a candidate who is an office holder?

How can a charity evoke information from a candidate about issue positions?

How do you handle employees of a charity wanting to engage with candidates or political campaigning?

How do you manage your nonprofit's officer and executives' personal engagement in campaigns?

Candidate Electioneering 501(c)(4) & 501(c)(6) Organizations

Candidate electioneering is permitted so long as it is not the primary purpose of the 501(c)(4) or (6)

Candidate electioneering expenses under Section 527 are taxable to the nonprofit unless it is in a separate segregated fund.

Legal compliance for federal election and state campaign finance laws require adherence

Engagement by 501(4) or (6)

- Candidate questionnaires
- Voter Guides with grading
- Endorsements
- Sponsor topic-specific debates
- Fundraise
- Make certain independent expenditures
- Establish separate segregated funds under Section 527

Expenses of lobbying and candidate electioneering must be disclosed to members as the portion of dues that are not tax deductible as a business expense.

Reporting for Candidate Electioneering

- IRS Form 990 Schedule C
- IRS Form 1120-POL for 501(c)(4) or 501(c)(6)
- Federal Election Commission Reporting
- State Campaign Finance Reporting

Form 1120-POL Department of the Treasury Internal Revenue Service	U.S. Income Tax Return for Certain Political Organizations ▶ Go to www.irs.gov/Form1120POL for the latest information.	OMB No. 1545-0123 2018
For calendar year 2018 or other tax year beginning _____, 2018, and ending _____, 20		
Check the box if this is a section 501(c) organization <input type="checkbox"/>		
Check if: <input type="checkbox"/> Final return	Name of organization _____	Employer identification number _____

Candidate Direct Giving: Traditional Federal PAC

Establishing affiliated PAC allows direct contributions to candidates

- Access to fundraisers and events
- In-kind contributions
- Member direct giving to elections
- Independent expenditures

Organization of PAC

- Setup rules flexible
- Reporting required
- Name must include affiliated organization name
- Federal contributions are focus

Affiliated PAC Finances and Fundraising

Affiliated organization pays costs of PAC

- Allows PAC money raised to be reserved for direct political giving

Affiliated PAC Fundraising

- Solicit money from particular class of affiliated entities
- Contributions not tax deductible to donor
- Multiple avenues
- Mandatory disclaimers on solicitations

Discussion

What are practical tips for protecting a 501(c)(3) related to a 501(c)(6) association or 501(c)(4) engaged with candidates?

How is PAC work related to lobbying work?

How do you insulate or involve the PAC in relation to 501(c)(3) meetings, members and governance?

What have you seen that is used by clients to engage with candidates that effectively helps their lobbying goals?

Take Aways

Know the rules that apply to your organization or organizations

Assess the context of your organization(s)

Reach out to peers at ACC National Capital Region and Nonprofit Organizations Network

Obtain legal counsel with expertise in nonprofits and elections

Determine the risk tolerance for the organization(s)

Develop policies and procedures

Establish who is accountable and responsible

Conduct training

Monitor or manage compliance by in-house counsel

Resources

IRS website

IRS Rev. Rulings 2007-41 and 2004-6

FEC's website on Separate Segregated Funds

Learn Foundation Law's Electioneering Rules for Private Foundations and Public Charities
online training

Alliance for Justice technical assistance and online training

[See supplemental materials for links](#)

Thank You

Jonathan Blum

jblum@Polsinelli.com

Anita Drummond

anita.drummond@cancer.org

Julius Hobson

jhobson@Polsinelli.com

Ann Springer

aspringer@apa.org